

MUR 6721
(Todd Long; Todd Long for Congress)
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Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 52 U.S.C. §§ 30109(a)(4)(B) and 30109(a)(12)(A) (formerly 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A)) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Assistant General Counsel Mark Shonkwiler in the Office of the General Counsel at (202) 694-1590.

On behalf of the Commission,


Ann M. Ravel
Chair

Enclosures

Factual and Legal Analysis

180045444088

1 **FEDERAL ELECTION COMMISSION**
2 **FACTUAL AND LEGAL ANALYSIS**
3

4 **RESPONDENT:** Todd Long MUR: 6721
5 Todd Long for Congress and
6 Todd Long in his official capacity as treasurer
7

8 **I. INTRODUCTION**

9 This matter was generated by a complaint concerning automated telephone calls, or
10 "robocalls," from Beth Steele and Women Advocating Respect ("WAR") that expressly
11 advocated the defeat of Representative Alan Grayson, a candidate in 2012 for the Ninth
12 Congressional District of Florida. The record evidence includes Steele's assertion that her
13 payments for the robocalls were not independent expenditures because they were coordinated
14 with Grayson's opponent, Todd Long, and his principal campaign committee, Todd Long for
15 Congress and Todd Long in his official capacity as treasurer (collectively, "the Committee").
16 Long and the Committee submitted a short response denying involvement with the robocalls. As
17 discussed below, based on the evidence available in the record, the Commission finds reason to
18 believe that Long and the Committee violated the Federal Election Campaign Act of 1971, as
19 amended ("the Act"), by accepting and failing to report in-kind contributions from Steele and by
20 not including the required disclaimers in the robocalls made on behalf of Long and the
21 Committee.

22 **II. FACTS**

23 In the 2012 elections, Todd Long was the Republican nominee running against the
24 Democratic nominee, Grayson, to represent the Ninth Congressional District of Florida. Compl.
25 at 2. The Complaint alleged that on or about October 25, 2012, robocalls featuring Steele's
26 voice were made to voters in Florida's Ninth Congressional district. The recording stated:

1 Hi, I'm Beth with Women Advocating Respect. On behalf of the women
2 of Central Florida, I want you to know this about multi-millionaire
3 congressional candidate Alan Grayson. This is the same Alan Grayson
4 who called Dan Webster 'Taliban Dan' simply for being a Christian. His
5 TV and radio ads against Todd Long are absolutely false. His distortions
6 to attempt to scare our Seniors are despicable. This is the same Alan
7 Grayson already thrown out of Congress once for his repeated lies and
8 outrageous comments. Now he is being sued for millions of dollars for
9 taxpayer fraud. On November 6, send Alan Grayson home for good. Paid
10 for by Women Advocating Respect.
11

12 Compl. at 1-2.

13 The Complaint alleged that WAR, which was not registered with the state of Florida or
14 the Commission, was merely the alter ego of Steele, who the Complaint characterized as Todd
15 Long's girlfriend. *Id.* The Complaint further alleged that Steele or WAR's payments for the
16 robocalls constituted independent expenditures that should have been reported pursuant to
17 52 U.S.C. § 30104(c)(1) and 11 C.F.R. § 109.10. The Complaint also alleged that because these
18 expenditures (which allegedly were for more than \$1,000) were made within 20 days of an
19 election, Steele or WAR should have reported them within 24 hours as required by 52 U.S.C.
20 § 30104(g)(1)(A) and 11 C.F.R. § 109.10(d).

21 The available information in the record before the Commission indicates that Long asked
22 Steele to participate in the robocalls and help pay for them.¹ This information includes a
23 statement that Steele "did a favor for a friend who was a candidate" against Grayson and that

¹ The record includes four documents: (1) a temporary check for \$250 issued to Luz Rivera with "Women Advocating Respect" handwritten at the top and dated October 3, 2012; (2) a temporary check for \$100 issued to Christina Colon with "Women Advocating Respect" handwritten at the top and also dated October 3, 2012; (3) a \$350 invoice issued to Women Advocating Respect dated October 16, 2012, from a company called Brave Designs; and (4) a check from "Women Advocating Respect" for \$350 issued to Jeremy Chambers and dated November 6, 2012. McDonough explained that the check to Chambers (owner of Brave Designs) was for recording the call and that the two other checks were to persons who provided Spanish translation services in connection with a Spanish-language version of the same robocall script.

1 Steele, not WAR, made \$700 in expenditures to produce the robocalls.² It also includes a
2 statement that Steele only made the expenditures because Long told her to do so.³

3 Steele represented that she never incorporated WAR and that the bank account she used
4 to make her payments for the robocalls was open for only two months. She explained that it was
5 Long's idea to make the robocalls, that he asked her to do them but she did not know why, and
6 that she participated in producing the robocalls simply as a favor to Long. Steele also confirmed
7 that her payments for the calls were not related to other in-kind contributions from her to Long's
8 campaign, which the Committee had disclosed in its reports to the Commission. She stated that
9 she was not reimbursed for the costs of the robocalls and that she spent only \$700 in connection
10 with them.

11 According to Steele, Long asked her to write two checks to cover the cost of translating
12 the robocalls into Spanish, provided the names of the two payees, and told her what amounts to
13 pay. She did not speak with either of the women to whom she wrote checks for the Spanish
14 version of the robocall, but understood that one translated the text of the robocalls into Spanish,
15 while the other provided voice narration for the Spanish-language version.⁴ Steele further
16 asserted that Long provided the script for the robocalls.

17 Steele has asserted that Jeremy Chambers of Brave Designs came to her office with his
18 equipment to record the calls. On January 30, 2014, Chambers stated in an interview that Steele
19 requested his services and paid him \$350, that he simply recorded the robocall, and that he

² Steele represented that she and Long are no longer friends.

³ Counsel represented that Steele's \$700 expenditure for the robocalls was not included among an additional \$2,399 in in-kind contributions from Steele that the Committee had disclosed in reports filed with the Commission.

⁴ Steele did not remember how she sent the checks to the translator and interpreter and had no contact information for them. *See* E-mail from McDonough, Counsel to Steele (Feb. 19, 2014).

1 provided the recording to Steele. The available information includes a statement that Steele e-
2 mailed the recording to either Long or one of his campaign workers and that she did not know
3 how the recording became a robocall.

4 Steele represented that Long or his campaign determined who would be called. She said
5 that she did not have a list of numbers, but that she understood that the calls would be made to
6 certain counties based on "who they were going after." She could not quantify how many
7 robocalls were placed except to say that they were not in the "millions."

8 After receiving notification of Steele's allegations against him and the Committee, Long
9 submitted a short response, stating::

10 None of the allegations are true. I am aware that Women Advocating
11 Respect founded by Beth Steele ran a robocall regarding Grayson and his
12 record, antics etc. Ms. Steele and/or her organization Women Advocating
13 Respect paid for and produced the call. I didn't authorize the call as I
14 don't have any authority over Ms. Steele or Women Advocating Respect
15 and I did not pay for any of its costs.

16
17 Long Resp. at 1.⁵

18 **III. ANALYSIS**

19 **A. There Is Reason to Believe that Long and the Committee Engaged in a**
20 **Coordinated Communication with Steele and WAR in Connection with the**
21 **Robocalls.**

22 A payment for a "coordinated communication" is an in-kind contribution to the candidate
23 with whom it is coordinated and must be reported as an expenditure made by that candidate.

24 11 C.F.R. § 109.21(b). Under Commission regulations, a communication is considered
25 coordinated if: (1) the communication is paid for by a person other than that candidate or
26 authorized committee; (2) the communication satisfies at least one of the content standards set

⁵ The response also invited the Commission to call Long if it wished to inquire further about the matter. *Id.*

1 forth in 11 C.F.R. § 109.21(c); and (3) the communication satisfies at least one of the conduct
2 standards set forth in 11 C.F.R. § 109.21(d). *See id.* § 109.21(a).

3 The payment prong is satisfied here because Steele paid \$700 to produce the English and
4 Spanish language versions of the robocalls.⁶

5 The content prong is satisfied on two grounds. First, the robocalls appear to be a public
6 communication⁷ that expressly advocates the election or defeat of a clearly identified federal
7 candidate. *See* 11 C.F.R. § 109.21(c)(3). The WAR robocalls contain express advocacy because
8 the calls exhort listeners to defeat or reject the incumbent: "On November 6, send Alan Grayson
9 home for good." *Id.* § 100.22(a). Second, the robocalls also satisfy the content prong because
10 they are a public communication that clearly identifies a House candidate, Grayson, was made 90
11 days or fewer before the candidate's election, and was publicly disseminated in the candidate's
12 jurisdiction. *Id.* § 109.21(c)(4)(i).

13 The conduct prong is satisfied where the candidate requested or suggested the creation,
14 production, or distribution of the communication, *see id.* § 109.21(d)(1), or where the candidate
15 was materially involved in decisions regarding the content of the communication, the
16 communication's intended audience, and the means or mode of the communication, *see id.*
17 § 109.21(d)(2)(i)-(iii). The available evidence indicates that this standard was met as well.
18 Indeed, Steele has provided specific details, purportedly predicated on her firsthand knowledge,
19 concerning her and Long's mutual involvement in making the communication, stating that Long
20 asked her to make the robocalls and that he provided her with a script, directed her to pay

⁶ This amount likely does not represent the total value of the expenditures in connection with the robocalls, as it does not include any costs for obtaining recipient telephone numbers or for transmitting the robocalls.

⁷ Public communications include phone bank communications, which are defined to include 500 or more identical telephone calls. 11 C.F.R. §§ 100.26, 100.28.

1 vendors, and received the recording from her. Long, on the other hand, offered only a short,
2 general denial of Steele's assertions, contending only that he "didn't authorize the call" because
3 he did not "have any authority over Ms. Steele or Women Advocating Respect." Long Resp. at
4 1. But Long's lack of "authority" over Steele or WAR does not necessarily bear on whether the
5 conduct prong for coordination is met here — that is, whether he requested, suggested, or was
6 materially involved in the production or distribution of the robocalls.

7 Under these circumstances, the Commission finds reason to believe that Long and the
8 Committee coordinated the robocalls with Steele and WAR under 11 C.F.R. § 109.21, resulting
9 in Long and the Committee knowingly accepting an excessive in-kind contribution, in violation
10 of 52 U.S.C. § 30116(f), which was not reported, in violation of 52 U.S.C. § 30104(b).⁸

11 **B. There Is Reason to Believe that the Committee Violated the Disclaimer**
12 **Provisions of the Act.**

13 If a communication is authorized and paid for by a candidate, a candidate's authorized
14 committee, or an agent of either, it must clearly state that the communication was paid for by the
15 authorized political committee. 52 U.S.C. § 30120(a)(1); 11 C.F.R. § 110.11(b)(1). If a
16 communication is authorized by the candidate but paid for by another person, the disclaimer
17 must state that the communication was paid for by such other person and authorized by the
18 candidate, his committee, or their agents. 52 U.S.C. § 30120(a)(2); 11 C.F.R. § 110.11(b)(2).
19 Communications not authorized by a candidate, his committee, or their agents, must include a
20 disclaimer that identifies, among other things, the person who paid for the communication and

⁸ Steele's statements suggest that she made excessive in-kind contributions to Long, which he and the Committee in turn accepted. Steele and her counsel confirmed that the \$700 she allegedly spent on the robocalls was unrelated to an additional \$2,399.05 that the Committee reported as in-kind contributions made in connection with the 2012 general election. The Commission takes no action at this time concerning a potential violation of 52 U.S.C. § 30116.

1 state that it is not authorized by any candidate or candidate's committee. 52 U.S.C.
2 § 30120(a)(3); 11 C.F.R. § 110.11(b)(3).

3 In this matter, the robocalls included a disclaimer that stated that WAR paid for them.
4 Yet the information Steele provided to the Commission indicates that WAR did not alone pay for
5 the robocalls, as the evidence available indicates someone other than WAR may have paid for
6 costs like access to the list of telephone numbers that received robocalls or for the calls'
7 transmission. In light of Steele's specific descriptions of Long's substantial involvement in the
8 robocalls and the lack of countervailing evidence currently available there is reason to believe
9 that Long or the Committee covered such additional expenses and should have been identified in
10 the disclaimer as a party who paid for the robocalls.

11 There also was no statement in the robocalls indicating whether they were authorized by
12 a candidate or candidate's committee. Steele's statements that Long asked her to make the
13 robocalls, provided her with a script, directed her to pay vendors, received the recording from
14 her, and then apparently arranged for the robocalls to be transmitted to specific persons or places,
15 provide reason to believe that the robocalls should have stated that Long authorized them. See
16 11 C.F.R. § 110.11(b). Long's assertion that he "didn't authorize the call" because he did not
17 "have any authority over Ms. Steele or WAR" is not to the contrary; the issue is whether he gave
18 advance permission or approval.

19 Accordingly, the Commission finds reason to believe that the Long Committee violated
20 the Act's disclaimer requirements.

21 **IV. CONCLUSION**

22 For the reasons presented above, based on the information available in the record, the
23 Commission finds reason to believe that Todd Long, and Todd Long for Congress and Todd
24

- 1 Long in his official capacity as treasurer violated 52 U.S.C. §§ 30116(f), 30104(b) and
- 2 30120(a)(1)-(3). The Commission notes, moreover, that there may prove to be a fair basis to
- 3 support a finding that any such violations by Long were knowing and willful, and thus to impose
- 4 additional penalties under the Act.⁹

⁹ See 52 U.S.C. §§ 30109(a)(5)(B), (d).

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